

the record shall also be filed with the hearing clerk. The record shall include: Pleadings; motions and requests filed and rulings thereon; the investigation report if one is prepared by the agency head and served on the parties; the transcript or recording of an oral hearing, and exhibits received, if an oral hearing was held; evidence filed by the parties if a written hearing was held; documents filed in connection with pre-hearing conferences; any proposed findings of fact, conclusions and orders, statements of objections, and briefs; any stipulations; and proof of service.

(c) *Submission to judicial officer.* Unless the hearing clerk reasonably believes that the record is not complete and in proper order, the record and the report shall be submitted to the judicial officer for decision.

(d) *Oral argument.* There shall be no right to oral argument other than that provided in rule 12(h), § 202.112(h).

[43 FR 30510, July 14, 1978, as amended at 60 FR 8467, Feb. 14, 1995]

**§ 202.116 Rule 16: Issuance of order.**

(a) As soon as practicable after the receipt of the record and report from the hearing clerk, the judicial officer, on the basis of and after due consideration of the record, shall issue an order in the proceeding, which shall be served on the parties.

(b) If the judicial officer deems it advisable to do so, the order may be made a tentative order. In such event, a presiding officer shall be assigned and the tentative order shall be served on each party, and each party shall have 20 days in which to file written exceptions to it, and arguments or briefs in support of such exceptions. If no party timely files exceptions, the tentative order shall automatically become the final order in the proceeding, and notice of such fact shall be served on the parties. If any party timely files such exceptions, they shall be handled in the same manner as a petition filed under rule 17, § 202.117.

**§ 202.117 Rule 17: Petition to reopen a hearing; to rehear or reargue a proceeding; to reconsider an order; or to set aside a default order.**

(a) *Filing of petition.*—(1) *To reopen a hearing.* Any party may file a petition

to reopen a hearing to take further evidence, at any time prior to the issuance of the final order, or prior to a tentative order becoming final. Such a petition must state the nature and purpose of the evidence to be offered, show that it is not merely cumulative, and state a good reason why it was not offered at the hearing if oral, or filed in the hearing if written.

(2) *To rehear or reargue a proceeding or reconsider an order.* Any party may file a petition to rehear or reargue a proceeding or reconsider an order of the judicial officer, at any time within 20 days after service on such party of such order. Such a petition must specify the matters claimed to have been erroneously decided, and the basis for the petitioner's claim that such matters were erroneously decided.

(3) *To set aside a default order.* Any respondent against whom an order is issued by the judicial officer, upon failure to file an answer as required, may file a petition to set aside such order, at any time within 20 days after service on such respondent of such order. Such a petition must state a good reason why an answer was not filed as required.

(b) *Brief or memorandum of law.* If such a petitioner wishes to file a brief or memorandum of law in support of such a petition, it must be filed with such petition.

(c) *Procedure.* A presiding officer shall be assigned upon the filing of any such petition, or upon notice to the hearing clerk (which may be written or oral, or by telephone) that any party intends to file any such petition. The party filing any such petition shall be referred to as the complainant or respondent, depending on the original designation of such party in the proceeding; such party shall have the burden of establishing that such petition should be granted. If a petition to reopen is timely filed, the order shall not be issued pending decision whether to grant or deny the petition. If a petition to rehear or reargue or reconsider, or to set aside a default order, is timely filed, operation of the order shall be stayed automatically pending decision whether to grant or deny it; if such a petition is not timely filed, operation of the order shall not be stayed unless